

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	

**Reply Comments
of the Public Service Commission of the State of Missouri**

The Public Service Commission of the State of Missouri (“MoPSC”) offers the following reply comments in response to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking (“NPRM”) released in the above captioned proceeding and the comments filed therein.¹

I. Joint Board recommendation to limit the scope of high-cost support to a single connection.

I.A. Summary of Previous Comments

Several parties, including the MoPSC, filed comments in response to the FCC’s NPRM. The MoPSC, as well as several other state public utility commissions, filed comments generally supporting some form of primary line restriction, while recognizing the many difficulties associated with such a restriction. The MoPSC also advocates that the availability of affordable, ubiquitous, high-quality services to rural consumers be given paramount importance when making any modifications to the Commission’s rules regarding high-cost universal service

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004) (“*NPRM*”); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. Feb. 27, 2004) (“*Recommended Decision*”).

support. As stated in its comments, establishing a primary line restriction is a complicated issue and the MoPSC continues to recommend that the FCC issue a further notice of proposed rulemaking asking specific questions of incumbents, competitors and Universal Service Administrative Company (“USAC”) to determine what sort of proprietary network information is available in terms of the number of households served by each carrier. The MoPSC continues to recommend that the NPRM seek input as to the definition of “primary line”. For instance, will the primary line be solely determined by the customer; will the primary line be the line used to dial “9-1-1” from the customer’s place of residence; will the primary line be restricted to the customer’s wireline service; will the primary line be the line used by the customer to make a certain percentage of his/her calls. There are many scenarios that could result as customers obtain additional lines and additional technologies to accommodate their changing calling needs. The Commission should also ascertain how voluminous such data might be, and inquire as to USAC’s ability to collect and manipulate such data. The Missouri PSC remains concerned about these and other administrative challenges associated with primary line limitations, and therefore urges the FCC to thoroughly examine and resolve the administrative issues of any such proposal before adopting any primary line limitation.

I. B. Additional Concerns

At this time, the MoPSC would also like to express concerns regarding how the primary line proposals could affect the provision of telecommunications services in rural America. The MoPSC urges the Commission to consider a policy result that keeps universal service goals in the forefront, and ultimately benefits rural consumers. The impact on rural consumers, and rural America in general, could influence the MoPSC’s ultimate position on the primary line proposals.

The Comments of the People of the State of California and the Public Utilities Commission of the State of California state, “Currently, changing the high cost support to primary lines only will have little effect in California as only eighteen ILECs serving rural study areas receive high-cost support.” Unlike California, other states, including Missouri, have many more rural study areas receiving high cost support. To that end, the MoPSC submits these reply comments to further encourage the Commission to issue a FNPRM and ask specific questions as to the impact any primary line resolution will have on rural America. For instance, the MoPSC suggests the Commission seek input on such things as: (1) the impact the various primary line proposals will have on the per line, or additional line rates of consumers; (2) the impact the various primary line proposals will have on investment in rural America; and, (3) the impact the various primary line proposals will have on broadband deployment in rural America. The MoPSC encourages the Commission to elicit specific input on these questions from the carriers, not just generalities such as investment will be hampered, rates may increase.

II. Joint Board recommendation that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Communications Act of 1934, as amended (Act).

In its comments, the MoPSC declined to specifically comment on permissive federal guidelines for states to consider granting ETC designation because of pending ETC cases. Since compiling its comments, the MoPSC issued a Report and Order in Case No. TO-2003-0531, *In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, c/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996*. This issue is extremely important to preserve and ensure the sustainability of the universal service

fund by containing the growth in the size of the High Cost program. While the MoPSC declines to provide specific comments because of other pending cases, it attaches a copy of the Report and Order denying Mid-Missouri Cellular's ETC application and the dissenting opinion of Commissioner Connie Murray for the Commission's consideration and review.

III. Summary

In summary, the MoPSC submits these additional comments urging the Commission to issue a FNPRM to determine the overall impact and cost to the rural consumer (for example, the cost and impact to small, rural business end users, the impact to customers whose only access to the Internet is via a secondary line currently supported by USF and the effect on the basic local rates of rural America) before advancing any primary line proposal and when considering permissive federal guidelines for states to consider in proceedings to designate ETCs under the Act.

Respectfully submitted,

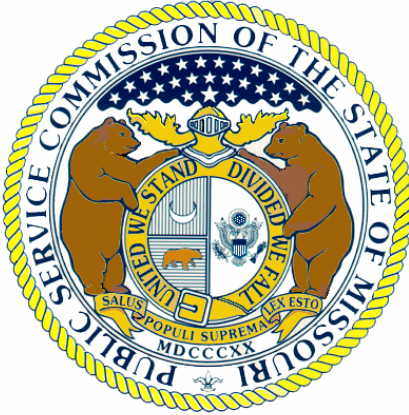
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Missouri RSA)
No. 7 Limited Partnership, d/b/a Mid-Missouri)
Cellular, for Designation as a Telecommunications)
Company Carrier Eligible for Federal Universal)
Service Support Pursuant to Section 254 of the)
Telecommunications Act of 1996.)

Case No. TO-2003-0531

REPORT AND ORDER

Issue Date: August 5, 2004

Effective Date: August 15, 2004

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA)
No. 7 Limited Partnership, d/b/a Mid-Missouri)
Cellular, for Designation as a Telecommunications)
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APPEARANCES

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REGULATORY LAW JUDGE: **Nancy Dippell, Senior Regulatory Law Judge.**

REPORT AND ORDER

Syllabus: This order finds that Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular should not be granted status as an eligible telecommunications carrier for federal universal service fund purposes.

Procedural History

On June 2, 2003, MMC filed an application for designation as an eligible telecommunications carrier for federal universal service fund purposes under Section 254 of the Telecommunications Act of 1996. MMC is the first wireless service provider to apply for ETC designation with the Commission. MMC sought ETC designation throughout its FCC-licensed service area¹ with respect to all local exchange carrier wire centers where

¹ Also known as a Cellular Geographic Service Area.

MMC's FCC-licensed service area encompasses at least one complete wire center of that LEC.²

MMC seeks ETC designation in areas served by the rural telephone companies Mid-Missouri Telephone Company, Alma Communications Company d/b/a Alma Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Spectra Communications Group, LLC d/b/a CenturyTel,³ and Sprint Missouri, Inc.⁴ MMC also seeks designation in non-rural telephone company areas served by CenturyTel of Missouri, LLC,⁵ and SBC Missouri, Inc., with respect to their wire centers that lie wholly or partially within MMC's FCC-licensed service area.⁶

With respect to the areas served by rural telephone companies, the proposed MMC ETC service area includes the entire study area for Alma and Citizens, and a portion of the study areas of Spectra, Mid-Missouri Telephone Company and Sprint. MMC initially requested ETC status throughout Spectra's entire Concordia exchange and for portions of Spectra's Lawson, Braymer, and Kingston exchanges. In its Initial Brief, however, MMC amended its request with respect to Spectra's existing service area to include only Spectra's Concordia exchange.⁷ The Commission finds MMC's Application to be amended accordingly.

² Tr. p. 134.

³ Hereinafter referred to as "Spectra."

⁴ Ex. 4, pp. 5-9.

⁵ Hereinafter referred to as "CenturyTel."

⁶ Application for Designation as an Eligible Telecommunications Carrier Pursuant to § 254 of the Telecommunications Act of 1996, Case No. TO-2003-0531, June 2, 2003 (hereinafter referred to as "Application"), at pp. 8-10 and Appendices D and E.

⁷ Initial Brief of Mid-Missouri Cellular, filed March 15, 2004, p. 23.

Sprint and Sprint Spectrum L.P., d/b/a Sprint PCS, intervened in this proceeding in support of MMC's request for ETC designation. Alma, Citizens, CenturyTel and Spectra intervened in opposition to MMC's request for ETC designation. The Office of Public Counsel withheld judgment on the MMC application until after all evidence was presented. In its Initial Brief, Public Counsel supported the designation as an ETC.

An evidentiary hearing was held on January 28-29, 2004. Neither Sprint nor Sprint PCS participated in the hearing. The parties, with the exception of Sprint and Sprint PCS, later filed Initial Briefs. In addition, all the parties, except Sprint, Sprint PCS, and Public Counsel, filed Reply Briefs and Proposed Findings of Fact and Conclusions of Law. Spectra and CenturyTel filed a motion to file their Proposed Findings of Fact and Conclusions of Law one day out of time. There was no objection to that motion and it will be granted.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Mid-Missouri Cellular

MMC is licensed by the Federal Communications Commission to provide commercial mobile radio service to seven rural counties wholly within the state of Missouri,

under Federal Communications Commission Call Signs KNKN595 and KNKR207.⁸ MMC is not certificated to provide telecommunications services in Missouri by this Commission.

In its verified application, MMC lists the services that it provides that qualify for universal service fund support.⁹ The Commission finds that MMC is providing all the services required to qualify for universal service fund support.

MMC also states in its verified application that it advertises the availability of its services and the charges for such through media of general distribution within its service territory.¹⁰ The Commission finds that MMC advertises its services through the media of general distribution.

MMC has been providing competitive wireless service since at least 1991. MMC's current service plans, or similar service plans, have been offered within a competitive environment for many years. Six other wireless carriers currently compete with MMC, in addition to the incumbent LECs. MMC provides service to the lower cost portions of its licensed coverage area similar to the nationwide wireless carriers, such as near the interstate highways and larger population centers. MMC also provides service to the more rural areas including population centers like Miami, Gilliam and Pilot Grove, Missouri. MMC will receive approximately \$1.75 million in universal service fund support annually if MMC's request as originally filed is granted.¹¹

⁸ Application, p. 1 and Appendix D.

⁹ Application, para. 4.

¹⁰ Application, para. 5.

¹¹ Ex. 8, p. 17; Tr. p. 49.

Service Offerings of MMC

MMC has provided the Commission with details of two Lifeline-only plans, known as Lifeline and Link-Up, that it will offer throughout its designated ETC service area. In addition, the Lifeline discount will be available on any of MMC's current service plans.¹² MMC suggests that without ETC status, MMC will not be able to offer Lifeline discounts. If granted, MMC will advertise the availability of the supported services and the availability of Lifeline and Linkup services to qualifying customers.

The Lifeline-only plan is intended to provide a low-cost service option comparable in price to that offered by the ILEC.¹³ Lifeline offers unlimited calling and mobility in the area served by the subscriber's home cell site at a fixed monthly price of \$6.25.¹⁴ The subscriber's outbound local calling area would correspond to its traditional local exchange calling area for that subscriber's address. With limited mobility of the wireless service, calls could be originated by the MMC Lifeline subscriber to any numbers within that exchange from any location within the subscriber's home cell site serving area, not just from within the subscriber's home. Similarly, the Lifeline customer would receive inbound calls, wherever they originate from, so long as the customer remains within the geographic area served by its home cell site. The area served by a home cell site typically extends to a 10- to 18-mile radius of the home cell site.¹⁵

The second MMC Lifeline-only plan, Link-Up, would allow for local calling and mobility throughout the entire service area for which MMC is designated as an ETC, for a

¹² Tr. p. 81.

¹³ Tr. pp. 59 and 157.

¹⁴ Tr. p. 59.

¹⁵ Tr. pp. 59 and 157.

flat \$10.00 per month charge.¹⁶ Since this would be the MMC subscriber's local calling area, even toll-restricted subscribers would have a seven-county mobility and local calling area with the Link-Up plan.

Neither Lifeline nor Link-Up would allow roaming into other cellular networks to place and receive routine calls; however, both plans would allow access to 911 even in a roaming situation.¹⁷

MMC's current rate plans now range from \$19.95 to \$64.95 per month. MMC has not indicated that it will reduce rates if it does become eligible to receive USF, other than to offer the two additional plans and a Lifeline discount as described above.¹⁸ Mr. Dawson testified on behalf of MMC that MMC's Lifeline plan would give qualifying consumers a \$1.75 monthly discount.¹⁹ Mr. Dawson also testified, however, that to initiate service a new Lifeline customer would have to pay a \$30 activation fee except for the most restricted Lifeline plan and would need to purchase a \$45 to \$199 wireless handset.²⁰ So, to benefit from a \$1.75 discount, a low-income customer would need to pay at least \$45, and perhaps \$75 or more just to initiate service.²¹

While the MMC rates appear to be costlier than those charged by Citizens, Alma, and Spectra, the subject level of services are not identical. Each of the current MMC plans includes voice mail, call waiting, call forwarding, three-way calling, and caller ID. Adding

¹⁶ Tr. p. 157.

¹⁷ Ex. 5, p. 7.

¹⁸ Ex. 10, p.15.

¹⁹ Tr. pp. 59 and 90.

²⁰ Tr. pp. 85-87.

²¹ *Id.*

the tariff rates for those features to the rates charged by the Intervenor results in monthly rates of \$29.85 for Citizens, \$21.95 for Alma and \$39.06 for Spectra. In addition, the local calling area for those LEC subscribers is limited to the subscriber's local exchange. All calls beyond that limited local calling area result in additional per minute toll charges.

By comparison, the MMC local calling area includes all of the exchanges of not only the Intervenor but also of the other LECs in a seven-county area. Within those calling areas, however, there may be dead spots²² and the possibility of dropped calls.²³ The Intervenor's subscribers receive unlimited local calling compared to a number of "bundled" minutes with which an MMC subscriber can place local or toll calls without incurring charges.

MMC also suggests that it may be able to provide service to some areas at a lower cost than a landline provider. MMC presented evidence that it has already helped Mid-Missouri Telephone Company serve one customer where the landline would have been cost-prohibitive.²⁴ The witnesses testified that MMC is willing to accept carrier-of-last-resort status and there was no evidence that suggested MMC was currently unable to serve the areas where ETC designation is requested. In addition, the MMC witnesses testified that the company would go to whatever lengths were necessary to make certain it could serve, at least within the customer's home, any customer within its wireless service area. MMC is also ready, willing and able to offer equal access to toll carriers should a customer want to choose such a plan.²⁵

²² Tr. p. 70.

²³ Tr. p. 127.

²⁴ Tr. pp. 97-99.

²⁵ Ex. 5, pp. 8-9.

Commitments to Quality of Service

MMC is a member of the Cellular Telecommunications and Internet Association and has committed to complying with the CTIA's current Consumer Code for Wireless Service.²⁶ Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.²⁷

In addition to the Consumer Code, Mr. Kurtis testified on behalf of MMC that if a potential customer requests service where the existing service area does not immediately allow MMC to provide service, MMC will take the same steps to provide service as those committed to by Virginia Cellular before the FCC.²⁸ Those steps are as follows: (1) modify or replace the requesting customer's equipment to provide service; (2) install a roof-mounted antenna or other equipment to provide service; (3) adjust the nearest cell site to provide service; (4) identify and make any other adjustments that can reasonably be made to the network or customer facilities to provide service; and (5) determine the

²⁶ Tr. pp. 128-9.

²⁷ Ex. 12.

²⁸ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004) (Virginia Cellular Order).

feasibility of installing an additional cell site, cell extender, or repeater to provide service where all other options fail. If, after following these steps, MMC still cannot provide the requested service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.²⁹

Mr. Kurtis also testified that MMC would be willing to meet the other conditions agreed to by Virginia Cellular.³⁰

Proposed Upgrade

The MMC network was originally deployed utilizing then state-of-the-art time division multiple access (TDMA) technology. However, that technology is no longer being supported and MMC needs to overlay its entire network with a code division multiple access (CDMA) technology. The specifics regarding the costs associated with that overbuild were provided in highly confidential testimony at the hearing.³¹

The CDMA overbuild, will allow for enhanced voice and data services throughout MMC's market and is also necessary for MMC to meet the FCC accuracy requirements with respect to E-911 Phase II locational services.³² MMC has admitted that it is required by federal law to implement E-911 system improvements regardless of whether this Commission grants MMC's requested ETC status.

MMC provided no specific written plans to the Commission regarding the use of the universal service funds. MMC has failed to provide written documentation of any

²⁹ Tr. pp. 142-143.

³⁰ *Id.*

³¹ Tr. pp. 186-187.

³² Tr. pp. 173-175.

specific system build-out plans and improvements other than the technology upgrade and has not provided any timetable for implementation of the upgrade.

MMC has admitted that it already provides service throughout its entire licensed service area and that MMC already has an extensive network in place. According to MMC, its existing network is the most extensive wireless network in its licensed service area.

Proposed Service Areas

MMC has requested that it be designated an ETC in rural study areas where Alma, Citizens, Mid-Missouri Telephone Company, Sprint, and Spectra operate. MMC has requested that it be designated an ETC in the non-rural study areas where CenturyTel and SBC Missouri operate. A study area is used to calculate the costs of providing service to a high-cost area for the dispersal of USF funds. In this application, the study areas are the same as the service areas of the rural companies, and the service areas encompass all the exchanges in which the rural companies operate. In addition, each exchange in this case is equal to one wire center.

Each of the intervenor companies are incumbent local exchange companies that provide basic local and other telecommunications services in their respective service areas, as certificated by the Commission and pursuant to Commission approved tariffs. Each is a carrier of last resort and is an ETC providing service to the public throughout its respective service areas. No evidence was presented to show that any residents in the service areas of the incumbents are being denied access to the public switched network or service in the incumbents' service areas.³³

³³ Tr. p. 281.

MMC requests ETC status throughout the entire rural LEC study areas of Alma and Citizens thus no redefinition of those study areas is requested.³⁴ In addition to MMC, six other commercial mobile radio service carriers currently provide cellular phone service in the service areas of Alma and Citizens.³⁵ The other commercial mobile radio service providers charge rates that are similar to those charged by MMC.³⁶ In the Citizens study area MMC already has a number of lines equal to 22% of what the ILEC has and in the Alma study area that number is equal to 76%.³⁷

Alma's local tariffed rate for residential service is \$6.50. When combined with the \$6.50 federal subscriber line charge, the rate is \$13.00 for basic service.³⁸ Citizens' local tariffed rate for residential service is \$8.40. When combined with the \$6.50 subscriber line charge, a Citizens customer pays \$14.90 for local service.³⁹

MMC requests ETC designation in the entire Concordia wire center. This wire center is a noncontiguous portion of a larger study area.⁴⁰ The MMC licensed service area also encompasses portions of the Braymer, Kingston, and Lawson wire centers.⁴¹ No evidence was presented indicating that any member of the public currently was being denied basic local telecommunications service in Spectra's service area.

³⁴ Application, para. 6.

³⁵ Ex. 10, p. 21.

³⁶ Tr. p. 262.

³⁷ Ex. 8, p. 20; Tr. p. 377.

³⁸ Ex. 10, p. 14.

³⁹ Ex. 10, p.14.

⁴⁰ Tr. p. 134.

⁴¹ Application at Appendix D.

Spectra does not disaggregate, keep, or report ETC-related records or line counts below the exchange level. Spectra has disaggregated its study area down to the wire center level.⁴² MMC's request as originally filed would require the incumbent LECs to begin to keep records for partial wire centers and thus would create added administrative burdens and costs to the incumbents where this was to occur. MMC's request for an ETC service area with respect to the area served by Spectra has now been limited to only the Concordia wire center. With this deletion of the partial wire centers from its proposed ETC service area, MMC proposes to serve the entire contiguous portion of the study area within its licensed service area.

By seeking ETC status in only Spectra's Concordia exchange, and not in the remaining portions of Spectra's existing ETC study area, MMC's Application raises the issue of potential cream-skimming. In order to determine whether MMC is engaging in prohibited cream-skimming with respect to Spectra's Concordia exchange, the Commission must look to the factual record before it. The record, however, is silent with respect to existing Spectra universal service fund support levels in the Concordia exchange, the specifics of Spectra's disaggregation plan, and the population density in Spectra's exchanges.

The evidentiary record does, however, indicate that the Concordia exchange is much larger than the other partial Spectra exchanges within MMC's licensed coverage area and that it is located in an already highly competitive area along a major interstate highway, where, according to Mr. Kurtis, other wireless carriers target their marketing and engage in cream-skimming. Accordingly, on this record the Commission is unable to find that no

⁴² Ex. 9, p. 13.

cream-skimming would occur with respect to Spectra's Concordia exchange if MMC's request is granted.

Mid-Missouri Telephone Company is an affiliate of MMC. Mid-Missouri Telephone Company's study area is comprised of three noncontiguous geographic areas. Two of those noncontiguous areas, encompassing nine⁴³ of the twelve Mid-Missouri Telephone Company wire centers, lie wholly within MMC's licensed service area and were included in the proposed MMC ETC service area.⁴⁴ The remainder of the study area is comprised of the Fortuna, Latham and High Point wire centers and is a noncontiguous geographic area that lies wholly beyond MMC's licensed service area.⁴⁵

MMC requests redefinition of Mid-Missouri Telephone Company's service area to include only the nine contiguous wire centers. Mid-Missouri Telephone Company does not object to this redefinition.

MMC has also sought ETC designation coterminous with the following Sprint wire center boundaries: Blackburn, Centerview, Green Ridge, Henrietta, Holden, Houstonia, Lexington, Malta Bend, Odessa, Otterville, Smithton, Sweet Springs, and Warrensburg.⁴⁶ MMC has sought ETC designation for those portions of the following Sprint wire center boundaries that lie within MMC's licensed service area: Blairstown, Calhoun, California, Chilhowee, Clarksburg, Cole Camp, Hardin, Ionia, Kingsville, Leeton, Lone Jack, Norborne, Oak Grove, Strasburg, Syracuse, Tipton, Urich, Waiverly, Wellington and Winsor.⁴⁷ MMC

⁴³ The Gilliam, Bunceton, Speed, Pilot Grove, Marshall Junction, Nelson, Blackwater, Arrow Rock, and Miami wire centers. Application at Appendix D and F.

⁴⁴ Application, p. 13, and Appendix D.

⁴⁵ Application at Appendix D.

⁴⁶ Application at Appendix E.

⁴⁷ Application at Appendix E.

requests that the Commission redefine the service area along the licensed service area boundaries for MMC's system. Sprint has not objected to the redefinition of its service area.

Public Interest

MMC suggests in its Application that granting ETC status to MMC "will enhance consumer welfare by bringing service choices, innovation, quality differentiation and rate competition to the local market."⁴⁸ MMC fails to explain in sufficient detail how these public interest benefits will occur. The only mention of a forward-looking plan is MMC's assertion that it will use universal service fund support to finance construction, maintenance and upgrading of facilities, which would allow MMC to serve remote locations.⁴⁹ However, MMC provided no supporting documentation to substantiate that such remote locations exist, or that these locations are substantial enough to make the ETC grant in the public interest.

MMC claims an ETC grant will bring the benefits of advanced technologies to the remote areas of MMC's service area.⁵⁰ The only advancement in technology discussed in any detail concerned the industry-wide change in platforms from a TDMA platform to a CDMA platform. Mr. Dawson testified for MMC that it would upgrade platforms with or without USF support.⁵¹ Thus, the new technology deployment appears to be inevitable with or without USF support, and does little to support a finding that the ETC designation is in the public interest.

⁴⁸ Application, p. 14-16.

⁴⁹ Application, p. 16.

⁵⁰ Tr., p. 36.

⁵¹ Tr. pp. 86-87.

Mr. Kurtis testified that a wireless ETC's provisioning of additional lines to existing ILEC subscribers will expand the availability of innovative, high-quality and reliable telecommunications services.⁵² No evidence was presented, however, indicating how this ETC grant will increase the lines provisioned to existing ILEC subscribers.

MMC's next argument in favor of the ETC grant is that it will bring the benefits of wireless service to the current Lifeline subscribers of the various ILECs.⁵³ MMC suggests that without ETC status, MMC will not be able to offer Lifeline discounts. Mr. Dawson testified that MMC's Lifeline plan would give qualifying consumers a \$1.75 monthly discount.⁵⁴ However, Mr. Dawson also testified that to benefit from a \$1.75 discount, a low-income customer seeking only the Lifeline plan would need to pay for a handset costing at least \$45, and a low-income customer seeking the Link-Up plan would need to pay for a handset and pay an activation fee of up to \$30.⁵⁵ The Commission finds that for low-income customers, the cost of initiating service will erase any benefit that a Lifeline customer would receive through a \$1.75 Lifeline discount.

The Commission finds that MMC has not shown that the benefits to the public of granting MMC ETC status will outweigh the potential detriments. The Commission also agrees with the Office of the Public Counsel that if MMC's request were granted it would be important for the Commission to place reasonable limits on MMC so that the Commission can monitor and ensure that essential telecommunications services are provided in a manner consistent with the protections currently afforded to wireline customers. While

⁵² Ex. 5, p. 6.

⁵³ Tr. p. 36.

⁵⁴ Tr. p. 59.

⁵⁵ Ex. 1, Attachment 1; Tr. pp. 59 and 85-86.

MMC has verbally made general system improvement and customer service commitments the record is unclear as to the extent of the Commission's legal authority and practical ability to enforce such commitments if MMC's request is granted.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

SBC Missouri, CenturyTel, Sprint, Mid-Missouri Telephone Company, Spectra, Alma, and Citizens are each a "telecommunications company" and a "public utility" as those terms are defined in Section 386.020, RSMo 2000, and are therefore fully subject to the regulatory jurisdiction of the Commission. Each of the companies is an incumbent local exchange carrier and has been designated as an ETC for purposes of receiving federal USF support.

Spectra, Mid-Missouri Telephone Company, Alma, Citizens, and Sprint are each rural telephone companies as defined by the Federal Telecommunications Act of 1996.

CenturyTel and SBC Missouri are non-rural telephone companies. While not a rural telephone company as defined by the Act, at least two of CenturyTel's four statewide ETC study areas are rural.

The commercial mobile radio service provided by MMC is specifically excluded from the statutory definition of "telecommunications service."⁵⁶ Thus, MMC is not subject to the general regulatory jurisdiction of the Commission. Under the authority granted to the Commission by the FCC, MMC has requested that the Commission designate it as an

⁵⁶ Section 386.020(53)(c), RSMo.

eligible telecommunications carrier for purposes of receiving federal universal service support.

The purpose of the Universal Service Fund is to provide financial support to carriers that use the support to advance universal service principles. Before a carrier can receive support from the USF, the carrier must be designated as an ETC by the state commission with jurisdiction over the service area where the carrier seeks to apply its USF support.⁵⁷

The state commission must first confirm that the petitioning carrier offers the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act.⁵⁸ Second, the state commission must confirm that the petitioning carrier advertises the availability of such services and charges using media of general distribution.⁵⁹ After making those determinations, the Commission must determine if the request is in the public interest.⁶⁰

Requirements of 47 U.S.C. Section 214(e)(1)

Paragraph (1) of Section 214(e) of the Act requires that an eligible telecommunications carrier:

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

⁵⁷ 47 U.S.C. § 214(e).

⁵⁸ 47 C.F.R. § 54.101.

⁵⁹ 47 U.S.C. § 214(e).

⁶⁰ 47 U.S.C. § 214(e)(2).

The Commission has previously found that MMC offers the services that are supported by federal universal service support. The Commission has also found that MMC advertises the availability of those services using media of general distribution. No party contests that MMC meets the requirements for provision of service found in Section 214(e)(1). The Staff and Intervenors only argue that MMC has not proven that the designation would be in the public interest, particularly in the rural service areas. Thus, the Commission concludes that MMC has met the requirements set out in Section 214(e)(1)(A) and (B).

Public Interest Determination

Section 214(e)(2)⁶¹ of the Act, as well as the Federal Communications Commission regulations,⁶² govern the designation of ETC status. Section 214(e)(2) of the Act states, in relevant part:

Upon request and consistent with the public interest, convenience and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Thus, the Commission must determine if the designation of an additional ETC is in the public interest.

This case represents a case of first impression before the Commission with respect to the designation of wireless ETC. This is not, however, a case of first impression

⁶¹ 47 U.S.C. § 214(e)(2).

⁶² 47 C.F.R. § 54.201, *et seq.*

with respect to this Commission's grant of ETC status to non-LEC carriers in areas served by rural telephone companies.⁶³

At the time the MMC application was originally filed, and during the period of time that written testimony was prepared and filed, the FCC had consistently held that the public interest benefits related to the introduction of competition in rural areas satisfied the public interest mandate of Section 214. As of that point in time, the FCC had never denied or conditioned a wireless ETC application. In the *Green Hills Order*, applying the same statutory provisions at issue in the instant case, the Commission approved a stipulation that found, without testimony or further support that the grant of the requested ETC status in an area served by a rural telephone company was in the public interest.

On the eve of the hearing in this proceeding, the FCC issued an order setting forth additional guidance to be used in conjunction with a public interest finding for competitive ETC designations in areas served by rural telephone companies.⁶⁴ In addition, the FCC has issued an order in the *Highland* case⁶⁵ that helps define the public interest standard. Thus, the current case may be distinguished from the Commission's previous *Green Hills Order* because the FCC has given this additional guidance and specifically "acknowledge[d] the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas."⁶⁶

⁶³ See, e.g., *Application of Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services*, Case No. CO-2003-0162, Order Approving Stipulation and Agreement (adopted March 4, 2003) (*Green Hills Order*).

⁶⁴ *Virginia Cellular*.

⁶⁵ *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. April 12, 2004).

⁶⁶ *Id.* at para. 4.

“With regard to the rural LEC service areas, the FCC found that the benefit of increased competition, while an important objective of the telecommunications policy, might not alone be sufficient to meet the public interest standard.”⁶⁷ The FCC states that “[I]n determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.”⁶⁸

In *Virginia Cellular*, the FCC stated that to make the public interest determination, the specific facts should be analyzed to determine

whether designation of a competitive ETC in a rural telephone company’s service area is in the public interest, [by weighing] . . . the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.⁶⁹

The FCC recognized that its “Common Carrier Bureau previously found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of Section 214(e)(1) of the Act.”⁷⁰ However, in *Virginia Cellular* and *Highland*, the FCC said that an additional ETC was not in the public interest in every instance even in non-rural areas. The FCC did not set out a new standard

⁶⁷ Initial Brief of MMC, p. 8.

⁶⁸ *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. April 12, 2004); See also, *Virginia Cellular Order*, at para. 26.

⁶⁹ *Virginia Cellular*, p. 13, para. 28.

⁷⁰ *Highland*, p. 10, para. 21.

to follow for non-rural areas, but said that because the company had met the more rigorous test for the rural areas, it must also necessarily meet the test for the non-rural areas.

Thus, the Commission will first examine whether MMC has shown that it is in the public interest for it to be designated as an ETC in the rural areas. To determine if the designation is in the public interest, the Commission looks to the factors set out by the FCC.

A. Benefits of Increased Competition

The FCC takes for granted that an increase in competition is in the public interest. This is based on the fact that one of the main goals of the Telecommunications Act of 1996 was to increase competition. Thus, under the FCC's analysis, having MMC designated as an ETC will have some benefit of increasing competitive choice. In the current case, however, the only evidence MMC presented regarding how competition will increase was two new service offerings for Lifeline.

The Commission has found that in the Citizens study area MMC already has a number of lines equal to 22% of what the ILEC has and in the Alma study area that number is equal to 76%.⁷¹ In addition, six other wireless carriers offer services in those same areas. The Commission concludes, based on the record before it, that the benefits to competition of designating MMC an ETC will not be very significant. MMC already has a significant presence in these service territories and the only additional offering MMC has presented to the Commission is its Lifeline programs. The other improvements made by MMC will take place regardless of the designation.

⁷¹ Ex. 8, p. 20; Tr. p. 377.

B. Impact on the Universal Service Fund

The second factor that the FCC considered is the impact on the Universal Service Fund. In the *Virginia Cellular* case the impact on the fund was 0.105% of the total high-cost support available to all ETCs.⁷² The impact on the fund of MMC of \$1,751,721 per year⁷³ is higher at about 0.20%.⁷⁴ The FCC acknowledged that there were concerns about the overall impact of designating multiple carriers, including wireless, as ETCs but left those concerns to be determined in its pending rulemaking.⁷⁵

The Intervenors believe a stricter analysis should be done. The Intervenors suggest that the Commission must look to the Universal Service Principles in Section 254(b) to determine the impact on the USF.⁷⁶ The Intervenors suggest that because the wireless carrier does not have to show that the amount it receives in Universal Service Funds is equal to its costs, like the ILECs must, that the USF principle regarding competitive neutrality is violated.⁷⁷ The Intervenors also believe that the USF will grow too rapidly with the addition of wireless companies.

⁷² 19 FCC Rcd 1563, note 96.

⁷³ Ex. 8, p. 17.

⁷⁴ See Universal Service Administration Company Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003, Appendix HC 1 (Universal Service Administrative Company, August 1, 2003) demonstrating that the total amount of high-cost universal service support is \$857,903,276 in the Fourth Quarter of 2003.

⁷⁵ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Process*, CC Docket No. 96-45, 18 FCC Rcd 1941, Public Notice (rel. Feb. 7, 2003).

⁷⁶ *Alma and Citizens Initial Brief*, pp. 7-9.

⁷⁷ Ex. 8, p. 25.

The Commission is also concerned with the rapid growth of the Universal Service Fund, and eagerly awaits final guidance from the FCC on improvements to the system. The FCC has stated that the state commissions should undergo a stricter public interest analysis before designating a carrier as eligible in the rural areas. Thus, the Commission cannot just ignore the potential harm to the universal service fund of designating a this wireless carrier as an additional ETC in rural areas. Especially, where that carrier already has a significant competitive presence and proposes only an upgrade to its service that will take place regardless of the designation.

C. Unique Advantages and Disadvantages of the Service Offering

The Commission has found that the advantages that MMC will provide include mobility, access to emergency services, and an increased local calling scope. Disadvantages include such things as dead spots and dropped calls.

One distinction between this case and the *Virginia Cellular* and *Highland* cases is that in those cases the companies each presented some specific build-out plans for adding additional towers and being able to service areas where currently no landline service exists and to improve dead spots. MMC presented evidence that it has already helped Mid-Missouri Telephone Company serve one customer where the landline would have been cost prohibitive.⁷⁸ However, no evidence was presented that any other ILEC has not been able or would not be able to meet its carrier of last resort options. Also, MMC has only generally said that it would increase its network capabilities. It has not presented any specific plans for how to upgrade its network, except for the technology upgrade.

⁷⁸ Tr. pp. 97-99.

Without specific plans for upgrades before it, the Commission cannot determine that MMC will offer any advantages over its current service offering.

D. Commitments to Quality of Service

Another disadvantage of wireless service is that the company is not subject to the mandatory quality of service standards with which the landline companies must comply. MMC has committed to complying with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service and to reporting the number of complaints it receives and the number of customers it cannot serve.

The Intervenor argues, however, that the Commission will have no tool to actually insure compliance since the cellular company does not have its rates and services regulated by the Commission. All of the parties agree that the only power the state Commission has once the designation is made is to revoke the ETC designation. Thus, the Commission's ability to guarantee the quality of service is limited.

Another concern is that the Consumer Code is not nearly as rigorous regarding quality of service as the requirements on the landline companies. The Intervenor suggests that if ETC status is granted, that it should be conditioned on the same quality of service standards that the landline companies must provide. MMC argues that by doing so, the Commission would be posing an unreasonable barrier to entry for the cellular company.

At least one court has ruled that Section 214(e)(2) does not prohibit the states from imposing additional eligibility requirements on ETCs.⁷⁹ However, the states may be limited in their ability to enforce the additional requirements. The Commission concludes

⁷⁹ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999).

that if ETC status were granted to MMC, it would be necessary to place sufficient requirements regarding quality of service to insure that customers would be protected.

E. Ability to Serve

One of the recommendations by the Joint Board is that state commissions may choose to require a formal build-out plan. Since MMC has not proposed any specific written plan for insuring it is capable of providing service, the Intervenor suggests that MMC has not proven it is capable of providing service.

MMC has committed that it is willing to accept carrier-of-last-resort status and there was no evidence that suggested MMC was currently unable to serve the areas where ETC designation is requested. In addition, the MMC witnesses testified that the company would go to whatever lengths were necessary to make certain it could serve any customer, at least within that customer's home. Thus, the Commission concludes that MMC has the ability to serve the area.

Conclusion

The Commission determines that the grant of ETC status to MMC is not in the public interest because MMC has not provided competent and substantial evidence to show that the public will benefit from designating MMC an eligible telecommunications carrier for universal service fund purposes.

MMC has not agreed to abide by the same quality of service standards as landline companies and will not be required to do so by law. The Commission will have no jurisdiction over rates or service plans of MMC, and MMC has not agreed to provide plans with lower rates if it is allowed to become an ETC except for the Lifeline service required under the law. MMC has told the Commission that the funds will be used for an upgrade of

its system, but it has not presented the Commission with any construction or financial plans or any timelines for these upgrades.

Additionally, MMC has not shown that the customers in the rural service areas will see any increased competition or benefits from the grant of ETC status to MMC. MMC has made no showing that it intends to expand its coverage area or fix dead spots. Although cellular service does offer mobility that the landline carriers cannot provide, that service is already available throughout MMC's service area to those customers who have a need for that service. MMC states that it intends to update its TDMA platform to a CDMA with the funds, but it also admits that it will make the upgrade regardless of whether it is granted ETC status.⁸⁰

MMC has not met its burden to show that a grant of ETC status in the rural areas is in the public interest. Furthermore, MMC has not shown that a grant of ETC status in the non-rural areas would be "consistent with the public interest, convenience, and necessity."⁸¹ Therefore, the Commission will deny MMC's request.

IT IS THEREFORE ORDERED:

1. That the application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular to be granted status as an eligible telecommunications carrier for federal universal service fund purposes is denied.

2. That Spectra Communications Group, LLC d/b/a CenturyTel, and CenturyTel of Missouri, LLC's Motion to Accept Proposed Findings of Fact and Conclusions of Law One Day Out of Time is granted.

⁸⁰ Tr. pp. 55 and 64.

⁸¹ 47 U.S.C. § 214(e)(2).

3. That all objections not ruled on are overruled and all motions not granted are denied.

4. That this Report and Order shall become effective on August 15, 2004.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Gaw, Ch., Clayton, Davis, and
Appling, CC., concur;
Murray C., dissents, with separate
dissenting opinion attached;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 5th day of August, 2004.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA)
No. 7 Limited Partnership, d/b/a Mid-Missouri)
Cellular, for Designation as a Telecommunica-)
tions Company Carrier Eligible for Federal)
Universal Service Support Pursuant to Section)
254 of the Telecommunications Act of 1996.)

Case No. TO-2003-0531

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I would grant ETC status to applicant in the non-rural areas, in accordance with Section 214(e)(2) of the Federal Telecommunications Act. I conclude, with the majority, that Mid-Missouri Cellular has met the requirements set out in Section 214(e)(1)(A) and (B) of the Act. Therefore, I interpret the act to direct this Commission to designate the applicant as an eligible telecommunications carrier for the non-rural service areas.

For that reason, I respectfully dissent.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 5th day of August, 2004.